

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115(b). (This is a PLR.)

June 9, 2005

Dear Xxxxx:

This letter is in response to your letter dated February 5, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

I am writing to you requesting a Private Letter Ruling (PLR), pursuant to 2 Ill. Admin. Code Sec. 1200.110. The PLR contains a general discussion of the jurisdictional rules for application of local Retailers' Occupation Tax (ROT), as they relate to retail sales transactions in Illinois. PLRs respond to inquiries made by taxpayers or their representatives under power of attorney (attached). Further, we understand that PLRs discuss tax principles or applications and are binding on the Illinois Department of Revenue (the IDOR) to the extent that the material facts of the situation remain the same, and the law relied upon in the ruling does not change.

FACTS

ABC has corporate headquarters in CITY, Illinois. One ABC business division sells brick for residential and commercial construction to contractors and other consumers in Illinois. The segment operates sales showrooms and distribution centers at several Illinois locations. It specifically has a sales office with an attached distribution center in

CITY2, Illinois. ABC's sales representatives are attached to CITY2, file their reports with the Regional Sales Manager located there, and they draw their payroll from there. Their expenses and sales are allocated to CITY2. In addition, ABC's Senior Credit Manager is located there. ABC is currently expanding its brick retail sales division in CITY2 for the following business reasons:

- ABC has completed a market study analysis which shows that CITY2 is centered within the region where its greatest future business expansion will occur. In other words, the market study concluded that ABC's greatest growth over the next decade will be in the southwest suburban corridor and that the area around CITY2 will witness a 60 percent growth in its housing market over the next decade.
- Many of ABC's competitors have moved from near-CITY3 suburban locations to the outlying suburbs, and ABC must stay close to its competitors and customers to remain competitive in the home-building marketplace.
- The CITY2 office location offers ABC lower operating costs and a better allocation of its workforce when compared to other locations.
- ABC has had a sales office in CITY2 for some years and has enjoyed historically a cooperative relationship with the municipality. The relationship has included discussions about ABC's possibly locating other business divisions there.
- CITY2 has presented ABC with a more attractive incentive package for meeting its business expansion needs than have other similarly-situated outlying suburbs.

CASH AND COMMERCIAL CREDIT CARD SALES

ABC makes sales to walk-in customers at all of its showroom/distribution centers. The walk-in customers are often residential homeowners. In these cases, ABC's clerk on-site takes the customer's order, accepts it, receives payment in cash or by commercial credit card (i.e., MasterCard, Visa), and allows the customer to leave the showroom/distribution center with the purchase or with an agreed-upon delivery date and location. ABC applies sales tax at the combined state and local tax rate imposed at the showroom/distribution center location where it makes the sale.

ACCOUNT SALES

ABC also offers account sales (credit terms) to commercial customers to facilitate business transactions. These account sales are offered to commercial customers who make frequent and/or large-volume purchases. The customers establish an account with ABC for the timely acquisition of the construction products. The following steps outline in detail ABC's procedures for making account sales in Illinois:

1. A new customer may view product samples either at one of the showrooms or at the customer's place of business. Some account sales customers (i.e. contractors, builders, masons) may send to one of ABC's showrooms their own future homeowner customers to pick out certain brick designs and product lines which will be purchased by account sales customers. Existing customers are typically familiar with ABC's product lines and will forward to a sales

representative a list of necessary building products, blueprints, or housing-construction plans.

2. If the account sales customer decides to purchase brick product, the sales representative, prepares a purchase inquiry, which identifies the customer, the sales representative, product type, style, quantity, estimated price, delivery date, and financing terms.
3. If the account sales customer is new and wants to establish a line of credit with ABC, the customer completes a credit application. An existing customer buying on credit has its account number noted on the inquiry.
4. The sales representative forwards the inquiry to ABC's Senior Credit Manager.
5. The Senior Credit Manager takes receipt of the purchase inquiry and then monitors the following activities which may be delegated to ABC personnel.
 - a) Converting the purchase inquiry into a preliminary sales order.
 - b) Reviewing the sales order for quality control purposes.
 - c) Reviewing the customer's creditworthiness.
 - d) If the order meets quality control parameters, and the customer has demonstrated good credit, ABC's Senior Credit Manager considers the order for approval.
 - e) If the order does not meet established quality parameters, or the customer displays insufficient credit, the Senior Credit Manager places the order on-hold and investigates further.
 - f) The Senior Credit Manager and his staff review the on-hold order and attempt to resolve its status by contacting for more information either the sales representative or the customer.
6. Based on the information received from the sales representative or customer, ABC's Senior Credit Manager either accepts or rejects the customer's order by performing the following procedures:
 - a) If the Senior Credit Manager decides to accept the customer order, he unconditionally binds ABC to the terms and conditions of the sale as detailed therein. Sales representatives do not have the authority to accept contractually customer orders, nor may they arrange for delivery of product, until the Senior Credit Manager makes an affirmative order-acceptance decision.
 - b) The Senior Credit Manager retains a record of his decision, including the customer's order information, the results of the credit check, and his signed and dated order acceptance.
 - c) The Senior Credit Manager next confirms and transmits his order-acceptance decision.
 - d) The order is then printed and fulfilled at the distribution center location closest to the customer's construction site.
 - e) Upon receiving the Senior Credit Manager's decision, the customer order fulfillment team assembles the customer's order and arranges for sales invoice issuance, customer payment terms, and pick-up or delivery.

- f) If the Senior Credit Manager rejects the customer's order, then the order is cancelled or is approved only as a cash sale.

ISSUE

1. What state and local tax rate should be applied to cash and commercial credit-card sales?
2. What state and local tax rate should be applied to account sales?

STATEMENT

ABC is currently under sales-tax audit by the IDOR. However, the period under audit, as stipulated in written IDOR correspondence to ABC, does not cover any of the issues addressed in this correspondence. In other words, the audit period as stipulated stands outside the timeframe to which all issues addressed in the PLR request pertain. Further, the issues presented in this PLR request are not pending in litigation in a case involving ABC. To the best of our knowledge, the IDOR has not previously ruled on the same or similar issues for ABC. Nor has ABC submitted a petition on a similar issue and withdrawn it before a PLR was issued.

LAW

A. Sales Taxes

1. State Sales Tax

Illinois imposes the Retailers' Occupation Tax (the ROT) on persons engaged in selling at retail within the state tangible personal property. Illinois imposes the tax at the rate of 6.25 percent of gross receipts from retail sales made. 35 ILCS 120/2-10; 86 Ill. Adm. Code Sec. 130.101.

2. Home-Rule Sales Tax

The Illinois Constitution authorizes home-rule units (e.g., municipalities) to exercise certain governmental powers. Sec. 6(a), Art. VII, Ill. Const. A home-rule unit may for example impose taxes upon occupations. Sec. 6(e), Art. VII, Ill. Const. In other words, a home-rule municipality may impose a tax upon all person engaged in the business of selling at retail within its municipality tangible personal property. The tax rate may be imposed in 0.25 percent increments. 55 ILCS 5/5-1006; 65 ILCS 5/8-11-1.

3. RTA-ROT

The state imposes a Regional Transportation Authority Retailers' Occupation Tax (the RTA-ROT) on persons engaged in selling tangible personal property at retail within certain counties. The RTA-ROT is imposed at rates ranging from 0.25 to 1 percent. 86 Ill. Adm. Code Sec. 320.101(a).¹

B. Order-Acceptance Point

In determining for taxing purposes the location of a sale, the IDOR has stated in a long-standing regulation that the single most important element is the location where the seller accepts the customer's purchase order: '[T]he seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business

within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule...Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.' 86 Ill. Adm. Code Sec. 270.115(b)(1). Also note: 86 Ill. Adm. Code Sec. 270.115(b), (c), 220.115(c), 630.120(b), and 320.115. ST 02-0019 PLR (August 1, 2002), ST 01-0005 PLR (February 14, 2001), ST 01-0007-PLR (February 15, 2001), ST 01-0018-PLR (May 16, 2001), ST 01-0003-PLR (February 2, 2001), ST 00-0085-GIL (April 19, 2000), ST 00-0038-GIL (March 6, 2000), ST 00-0020-GIL (January 26, 2000) and ST 91-1008-PLR (December 18, 1991), ST 93-0569-GIL (November 8, 1993), and ST 92-0333-PLR (June 30, 1992). The IDOR will assume, absent clear proof to the contrary, that the seller accepts the purchase order (i.e., makes the sale or executes the contracting action) at the place of business where the seller receives it from the purchaser. 86 Ill. Adm. Code Sec. 270.115(b)(2) and (c)(1). This is the case regardless of whether or not the purchaser takes delivery there—provided that the purchaser does receive physical possession of the property somewhere in Illinois. If the order-acceptance point is in Illinois, the location from which goods are shipped is also not controlling in connection with the imposition of local sales tax. Id.

The presumption that the seller accepts the purchase order at the location of its receipt may be rebutted when clear proof demonstrates that acceptance of the order takes place elsewhere. The IDOR has explained in numerous Private Letter Rulings (PLRs) and General Information Letters (GILs) that the location where the seller accepts the customer's purchase order is the determining element. According to the PLRs and GILs, an order is accepted only when the seller takes action that binds it unconditionally to the terms and conditions of the order.

In ST 02-0019-PLR (August 1, 2002), the IDOR asserted that, if a purchase order is accepted in a jurisdiction that imposes a local sales tax, the tax will be incurred there. In the PLR, the IDOR established that the company did not become bound to the terms and conditions of its sales on account until the company's credit manager located in CITY2, Illinois accepted the customer's purchase order. The acceptance took place only after the credit manager made a final review of the customer's account and credit. Therefore, the location of the company's credit manager in CITY2, Illinois, and the credit manager's binding acceptance in CITY2 of the purchase orders for the sales on account, established CITY2 as the Illinois jurisdiction that determined for these sales where the local sales tax applied.

In ST 01-0005-PLR (February 14, 2001), it was explained that a company maintains two offices in Illinois: City 1 is the site of the branch sales office and shipping warehouse. City 2 is the office location of the customer credit and relations analyst (the analyst). Customer orders are submitted to the branch sales office in City 1 where they are entered into the sales computer system. The sales computer system establishes customer creditworthiness and conditionally approves customer orders. The analyst in City 2 accesses all conditionally-approved orders and conducts a final review of them. After conducting a final review, the analyst informs the company's warehouse and branch sales office that he has given final approval to the orders. The IDOR determined that, even though customers' orders were given conditional approval in City 1, City 2, where the analyst makes final approval, is the jurisdiction whose local tax rate should apply. The IDOR stated that the place where the sale receives complete and unconditional approval determines what local sales tax rate should apply.

In ST 01-0018-PLR (May 16, 2001), customers are able to request pricing information from a company sales department. They may order products by phone or Internet, or from a sales representative. Orders are entered into the company's order-entry system and are conditionally approved once the customer's creditworthiness has been determined. The conditionally-approved orders are then sent for final approval to a credit analyst. The credit analyst researches the customer's credit history before making any final determinations on whether an order should be accepted or rejected. The IDOR stated that the credit analyst's evaluation of conditionally-approved orders constitutes the final action taken in accepting the purchase order. The location where the final approval takes place is the jurisdiction whose local tax applies.

In ST-93-0569-GIL (November 8, 1993), a retailer writes that salespeople located at a field office take its customers' orders. The salespersons enter the orders into a computerized order-entry system via remote hand-held transmitters plugged into telephone lines. The orders are then electronically transmitted to the retailer's central computer located at its corporate headquarters in Milwaukee. The orders appear on a credit approval screen there. If approved by the headquarters' credit department in Milwaukee, the orders are printed, and the items are shipped to the customers in Illinois. The IDOR opined in the GIL that the final acceptance of the orders takes place in Milwaukee rather than at the field office where salespeople take customers' orders. Again, it is important to note that the IDOR does not consider an order accepted until a decision that binds the seller to the order has been made.

In ST 91-0162-PLR (March 5, 1991), an oil marketing and distribution company employs a customer service clerk to take customer orders and determine if the customer has a sales account with the company. If the customer has a sales account with the company, the clerk sends the order for credit approval to the credit manager. If the credit is approved, the customer order is sent to the Executive Vice President, at the same location, for price determination and pricing authority. A billing and pricing clerk then processes the order and submits it to the commercial sales office in City 3, Illinois where it undergoes a final acceptance process. The commercial sales manager there compares the customer's order to a master customer record to verify the accuracy of the customer's information. If the order is accurate, the commercial sales manager in City 3, Illinois accepts it. After acceptance by the commercial sales manager, the order is considered binding on the company and is faxed to the dispatch center for release. The IDOR confirmed that the sales acceptance point occurs in City 3, Illinois, and this should be the jurisdiction whose local sales tax applies.

ANALYSIS

For walk-in sales, where the customer pays for the product with cash or a commercially-issued credit card, the order-acceptance locations—for purposes of imposing local sales tax—are the various showroom/distribution center locations. This is because the contractually-binding selling activity takes place there.

For account sales, the order-acceptance point is at ABC's sales office/distribution center located in CITY2, Illinois where its General Sales Manager and Senior Credit Manager are located and to which its brick retail sales representatives report. Purchase order-acceptance is determined as demonstrated by the following activities which take place there:

- ABC's sales representatives, attached to the CITY2 office, compose initial customer purchase inquiries.
- The sales representatives then submit all purchase inquiries directly to the Senior Credit Manager who takes receipt of them there.
- The Senior Credit Manager and his staff review the customer's order based on its account and credit history and other information.
- Upon determining that the customer's order information and credit history are satisfactory, it is the Senior Credit Manager who has the authority to accept the order, thereby binding ABC unconditionally to the terms and conditions of the sale as detailed therein.
- ABC personnel at other brick retail division showroom/distribution center locations do not have the authority to accept a customer's order for account sales, nor to arrange for any release and delivery of product, until they have received the Senior Credit Manager's acceptance of the customer's order.

For business reasons already noted, ABC is currently expanding in CITY2 the brick retail division of its business. Accordingly, it is ABC's intention to accept or reject all account sales through its Senior Credit Manager located there. Thus, the local tax rate imposed in CITY2 should apply to ABC's account sales.

CONTRARY AUTHORITY AND DISCUSSION

The IDOR has issued recently a General Information Letter (GIL), dated October 7, 2003, which articulated a revised policy in connection with jurisdictional rules for application of local ROT, as they relate to retail sales in Illinois. As understood, the main points of the policy, as supported by 86 Ill. Adm. Code Sec. 270.115, are as follows:

- Enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to the sale.
- When order acceptance activity takes place in more than one jurisdiction, the facts and circumstances surrounding the sale must be carefully scrutinized to assure that 'enough' of the acceptance activity has occurred in the home rule municipality to justify the conclusion that the sale takes place there.
- Significantly, the IDOR will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.

In response to the aforementioned points, we believe for the following reasons that enough of ABC's brick selling activity has occurred in CITY2 to justify the imposition of local ROT there:

- Sales representatives who write up customer purchase inquiries are attached to CITY2 and report to ABC's General Sales Manager headquartered there.

- The sales representatives transmit the customer purchase inquiries to ABC's Senior Credit Manager who takes receipt of them.
- The Senior Credit Manager directs a review of customer credit worthiness and other quality-assurance perimeters before approving or disapproving customer orders.
- Once the Senior Credit Manager approves a sale, he unconditionally binds ABC to the terms and conditions of the sales contract. ABC does not release any product to customers until the Senior Credit Manager's approval happens.

Even if it is still unclear where ABC's order acceptance takes place, or it is concluded that it takes place in more than one jurisdiction, the fact remains that customer purchase inquiries are written up by ABC sales representatives and are then sent by them to CITY2 where ABC's Senior Credit Manager, who is headquartered there, takes receipt of them. This fact indeed underscores the IDOR's presumption that the seller accepts a purchase order at the place of business where he receives the purchase order from the customer.

INFORMATION TO BE WITHHELD

We respectfully request that the IDOR delete any mention of the following from the publicly-disseminated version of this PLR:

NAMES/LOCATIONS

CONCLUSIONS

1. The facts of this case support the finding that ABC's order-acceptance points for its cash and credit-card sales are at its various showroom/distribution center locations. Thus, ABC should remit to the IDOR the state and local ROT imposed upon retailers doing business at the various showroom/distribution center locations.
2. The facts of this case also support the finding that ABC's order-acceptance point for its account sales are at its Senior Credit Manager's office located in CITY2, Illinois. Therefore, with respect to account sales, ABC should remit to the IDOR the state and local ROT imposed upon retailers doing business in CITY2, Illinois.

We respectfully request that the IDOR issue a Private Letter Ruling addressing the issues presented. **If, however, the IDOR's response is not in accordance with those conclusions expressed in the ruling request, please notify me before the PLR is issued.** Your cooperation is very much appreciated.

DEPARTMENT'S RESPONSE:

The Department's regulations state that "enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale." 86 Ill. Adm. Code 270.115(a)(1). (emphasis added) The Department has opined that the seller's acceptance of the customer's purchase order is the "most

important single factor” in the occupation of selling. However, when order acceptance activity takes place in more than one jurisdiction, the facts and circumstances surrounding the sale must be carefully scrutinized to assure that “enough” of the acceptance activity has occurred in the home rule municipality to justify the conclusion that the sale took place there. This inquiry will ordinarily be fact intensive and require an examination of all of the processes and procedures performed by the seller from the time the customer contacts the seller until the goods are delivered. Significantly, the Department “will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.” 86 Ill. Adm. Code 270.115(b)(2) (emphasis added.).

For walk-in cash and credit card sales at ABC's various showroom/distribution center locations, virtually all of the selling activity occurs within the home rule municipality in which the showroom/distribution center is located. Thus, in accordance with 86 Ill. Admin. Code 270.115(a)(1), the local tax of the home rule municipality in which the showroom/distribution center is located applies with respect to those sales.

With respect to “account sales”, ordinarily, the Department will not consider a home rule municipality to be the situs of the sale merely because a company representative physically housed in that jurisdiction performs a computer-assisted credit check on the prospective customer and “approves” or “releases” the purchase order. This is so even if the credit check is the final step in the company’s order acceptance process. This is implicit in the Department’s previous guidance that selling usually occurs where the purchaser accepts “a complete and unconditional offer to sell.” Your letter indicates that ABC’s sales representatives are attached to the CITY2 site, file their reports with the Regional Sales Manager located in CITY2, and draw their payroll from the CITY2 site; that ABC’s Senior Credit Manager is located at the CITY2 site; that customer purchase inquiries are transmitted to the Senior Credit Manager in CITY2; that the Senior Credit Manager located in CITY2 directs a review of the customer’s credit-worthiness and other quality assurance parameters; and that the Senior Credit Manager located in CITY2 unconditionally binds ABC to the terms and conditions of the sales contract at that site. These practices indicate that “enough” selling activity takes place at ABC’s facility in CITY2, Illinois. Therefore, the tax rate in CITY2, Illinois applies to account sales.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.ILTAX.com or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Sincerely,

Samuel J. Moore
Associate Counsel

¹ The board of commissioners of any county water commission district may also impose a sales tax on retailers of tangible personal property—the County Water Commission Retailers' Occupation Tax (the CWC-ROT). 70 ILCS 3720/4(a). The county may impose

the CWC-ROT at a rate of 0.25 percent of the gross receipts from retail sales. 70 ILCS 3720/4(b). DuPage is currently the only county to impose the tax. All retailers doing business within the DuPage Water Commission district must collect the tax on their sales made there. Information Bulletin FY 88-12, Illinois Department of Revenue (the IDOR) December 1, 1987. 86 Ill. Adm. Code Sec. 630.101(a):